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No. 97652-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TODD MCLAUGHLIN,
a Washington resident,

Plaintiff/Petitioner,

vs.

TRAVELERS COMMERCIAL INSURANCE COMPANY,
a foreign corporation

Defendant/Respondent.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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On behalf of
Washington State Association for Justice
Foundation

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to Washington State Association for Justice. WSAJ Foundation operates an amicus curiae program and has an interest in the rights of persons seeking redress under the civil justice system, including an interest in the proper interpretation and construction of insurance policies offering personal injury protection.

II. INTRODUCTION AND STATEMENT OF THE CASE

This case presents issues related the proper interpretation of Washington law governing interpretation of insurance contracts. The facts are drawn from the Court of Appeals opinion and the briefing of the parties. *See McLaughlin v. Travelers Commercial Ins. Co.*, 9 Wn. App.2d 675, 446 P.3d 654 (2019), *review granted*, 194 Wn.2d 1016 (2019) (Table); McLaughlin App. Br. at 2-4; Travelers Resp. Br. at 4-7; McLaughlin Reply Br. at 2; McLaughlin Pet. for Rev. at 1-3; Travelers Ans. to Pet. for Rev. at 2-3; McLaughlin Supp. Br. at 1-4; Travelers Supp. Br. at 2-3.

For purposes of this amicus brief, the following facts are relevant. Plaintiff Todd McLaughlin (McLaughlin) was listed as a named insured on a “California Personal Auto Policy” issued by Travelers Commercial Insurance Company (Travelers) on February 6, 2017, with the policy period commencing March 7, 2017. The Medical Payments Coverage Section of the policy provides in pertinent part as follows:

- A. We will pay ... for reasonable expenses incurred for necessary medical ... services because of “bodily injury”:
 - 1. Caused by an accident; and
 - 2. Sustained by an “insured”.
 - ...
- B. “Insured” as used in this Coverage Section means:
 - 1. You or any “resident relative”:
 - a. While “occupying”; or
 - b. As a pedestrian when struck by a motor vehicle...
 - 2. Any other person while “occupying”:
 - a. “Your covered auto”; or
 - b. A motor vehicle that you do not own while being operated by you or a “resident relative”.

Neither “accident” nor “pedestrian” are defined in the policy.

The policy also included an Uninsured Motorists Coverage Section which provides that Travelers will pay damages for bodily injury sustained by an insured and caused by an accident involving an uninsured motor vehicle.

In March, 2017, McLaughlin relocated from California to Washington at the behest of his employer. On July 31, 2017, McLaughlin was riding his bicycle in Seattle when the occupant of an automobile opened the car door and struck McLaughlin. McLaughlin incurred significant medical expenses for treatment of the injuries from the automobile accident, and submitted his expenses for payment to Travelers. Travelers issued payment for the \$100,000 limits under the Uninsured Motorist coverage. Travelers denied Medical Payments coverage on the basis that McLaughlin

did not come within the definition of an “insured,” because he was neither occupying a motor vehicle nor a “pedestrian” struck by a motor vehicle.¹

McLaughlin filed suit against Travelers and both parties moved for partial summary judgment. Travelers sought dismissal of McLaughlin’s claims for contractual medical payments benefits under its policy. *See* CP 66-67 (Travelers Mot. For Part. S. Jt). The parties agreed that the policy would be interpreted the same under either Washington or California law, and accordingly advised the trial court that there was no need for a choice of law analysis. *See* CP 67 (Travelers’ Mot. for Part. S. Jt. at n.2) (“[T]here is no conflict between the laws of Washington and California with respect to the contractual issues”) (brackets added), CP 70-71 (“Travelers believes there is no conflict with respect to the contractual claims...[B]oth Washington and California law are consistent with respect to the Plaintiff’s claims for coverage” (brackets added)); CP 86 (McLaughlin’s Mot. for Part. S. Jt.). The parties’ briefing focused on the issue of whether at the time of the automobile accident McLaughlin was a “pedestrian” within the definition of an insured under the Medical Payments coverage. The trial court concluded that the ordinary and common meaning of the term “pedestrian” did not include a bicyclist, and granted Travelers’ motion and denied McLaughlin’s motion. McLaughlin appealed.

¹ Causation is not at issue, as Travelers paid policy limits for McLaughlin’s injuries “caused by an accident” under its UIM coverage provision, and did not raise causation as an issue when it declined PIP coverage.

On appeal, Travelers equated its Medical Payments Coverage with PIP coverage. *See* Travelers Resp. Br. at 4. Travelers stated that California and Washington law are the same with respect to PIP coverage:

For the Court to engage in a conflict-of-laws analysis there must be an actual conflict of interests or laws with another state...“Absent an actual conflict, Washington law presumptively applies.”... In this case, *both Washington and California law are consistent with respect to the coverage issues presented*. Therefore, there is no conflict of interests or laws for the Court to engage in a conflict-of-laws analysis. Under either California or Washington law there is no legal support for McLaughlin’s claims.

Travelers Resp. Br. at 10-11 (citation omitted; emphasis added).

The Court of Appeals affirmed. *See McLaughlin*, 9 Wn. App. 2d at 677. Apparently accepting the parties’ statements that there was no conflict of laws, the appellate court did not analyze whether the policy should be interpreted under Washington or California law, and interpreted the policy as if it were a Washington policy. The Court of Appeals described the coverage as “PIP” coverage throughout its opinion, and applied Washington law concerning insurance policy and statutory interpretation, interpreted Washington insurance code and vehicle code statutes, and reviewed Washington case law in its legal analysis.

McLaughlin argued that “pedestrian” as used in the policy should be defined in accordance with the definition of pedestrian set forth in the Washington statutes that provide requirements for PIP coverage. RCW 48.22.005(11) defines pedestrian as “a natural person not occupying a motor vehicle as defined in RCW 46.04.320.” McLaughlin contended that since a bicycle does not come within the definition of “motor vehicle” in RCW

46.04.320, he should be considered a pedestrian within the meaning of that term in Travelers' policy.

Applying rules of insurance policy interpretation to determine the meaning of an undefined policy term, the court concluded the plain, ordinary meaning of "pedestrian" does not include a bicyclist. *See McLaughlin*, 9 Wn. App. 2d at 679-80. The court rejected McLaughlin's argument and instead relied on a dictionary definition which excluded a bicyclist from the meaning of pedestrian. The court held that "none of the authority cited by McLaughlin mandates that the plain meaning of an undefined term in an insurance policy be displaced if there is a definition of the same term in an insurance statute." *McLaughlin*, 9 Wn. App. 2d at 680.

The court further held that even if the definition of pedestrian from RCW 48.22.005(11) was incorporated into the policy, a bicyclist would not be included in the policy definition of pedestrian. *See id.* The appellate court did not limit its statutory interpretation to a consideration of RCW 46.04.320, but expanded its review to consider the definition of "pedestrian" as set forth in RCW 46.04.400, which defines a pedestrian as a person "afoot" and specifically excludes a person using a bicycle. *See id.* at 681. The court held that "pedestrian" as used in McLaughlin's policy is not ambiguous under either the dictionary definition or RCW 48.22.005(11), and accordingly did not construe "pedestrian" in favor of McLaughlin. *See id.* at 685-86.

III. ISSUE PRESENTED

Where insurance policy language conflicts with statutorily mandated PIP coverage, may a court interpret the policy language to provide less than the coverage required by the PIP statutes?

IV. SUMMARY OF ARGUMENT

In Washington, insurance coverage for personal injury protection (PIP) implicates important public policies, favoring full compensation to victims of automobile accidents. Under chapter 48.22 RCW, the Washington Legislature has mandated that PIP coverage be offered and specifies what coverage must be provided. Included in these provisions is the mandate that a named insured who suffers injury in an automobile accident is entitled to recover PIP coverage. Washington statutes are read into contracts of insurance, and to the extent insurance policy provisions conflict, they are supplanted Washington statutory law.

Under Washington's statutes governing PIP coverage, McLaughlin is entitled to benefits. McLaughlin is the named insured under his policy with Travelers, and suffered injury caused by an automobile accident that resulted in medical expenses. To the extent Travelers' policy provides otherwise, Washington statutory law is incorporated into the policy and dictates that McLaughlin is entitled to coverage.

V. ARGUMENT

A. **The Interpretation Of Travelers' Medical Payments Coverage Is Determined By The Application Of Washington Law Governing PIP Coverage.**

Washington applies the most significant relationship test to insurance contract choice of law issues. *See Mulcahy v. Farmers Ins. Co. of Washington*, 152 Wn.2d 92, 100, 95 P.3d 313 (2004); *Van Vonno v. Hertz Corporation*, 120 Wn.2d 416, 418, 841 P.2d 1244 (1992). If a party seeks the application of the law of a foreign state, it is incumbent upon that party to provide the court with a choice of law analysis. “An actual conflict between the law of Washington and the law of another state must be shown to exist before a Washington court will engage in a conflict of law analysis.” *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 103, 864 P.2d 937 (1994). “Without pleading or proof of applicability of foreign law, such law will be presumed to be the same as Washington’s.” *International Tracers of America v. Estate of Eric Hard*, 89 Wn.2d 140, 144, 570 P.2d 131 (1977). *See also* RCW 5.24.010, RCW 5.24.040.

Here, Travelers stated that its Medical Payments coverage was the same as PIP coverage, and that “both Washington and California law are consistent with respect to the coverage issues presented.” *See* Travelers Resp. Br. at 4, 11. Apparently relying upon Traveler’s representation that there was no conflict of laws, the Court of Appeals interpreted the policy the same as it would if it were a Washington policy.

Travelers chose to litigate this coverage dispute under Washington law in the trial court and in the court of appeals. In the Supreme Court, Travelers appears to rethink its earlier strategy, as it argues in several places in its Supplemental Brief that its policy is a California policy and not subject to interpretation by the application of Washington statutes. *See, e.g.*, Travelers Supp. Br. at 12 (“But the policy before the Court is not a Washington PIP policy and is not governed by RCW 48.22... But again, McLaughlin points to no Washington statute that affects the definition of “pedestrian” in a policy issued in California”). Travelers wants to pick and choose what Washington law applies, and what Washington law does not apply, to its policy. Travelers seeks to apply Washington law holding that the interpretation of the terms in an insurance policy is determined by the plain and ordinary meaning of the terms, which may be determined by a dictionary definition. Travelers does not want to apply Washington law requiring that statutorily mandated coverage is part of an insurance policy.

“A party must inform the court of the rules of law it wishes the court to apply.” *See Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 81, 322 P.3d 6 (2014) (citing *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983)). Here, Travelers informed the trial court and the court of appeals of the rules of law it wished to apply – the law of Washington. Having intentionally decided to argue whether its insurance policy afforded coverage to McLaughlin under Washington law in both the superior court and the court of appeals, Travelers should not be allowed to now raise a new argument that

Washington law should not be applied to a California insurance policy. Out of fairness to the trial court, the court of appeals and the opposing party, Travelers should not be permitted to raise its new theory for the first time in this Court. An appellate court generally will not review an issue or theory not presented at the trial court. *Ainsworth*, 180 Wn. App. at 81 (citing *Smith*, 100 Wn.2d at 37).

Just like the Court of Appeals decision, this amicus brief interprets Travelers' policy the same as a Washington policy would be interpreted under Washington insurance law.

B. Brief Overview Of Washington Law Regarding PIP Coverage.

PIP insurance is no-fault coverage for out-of-pocket expenses, including medical expenses, resulting from an automobile accident. *See Barriga Figueroa v. Prieto Mariscal*, 193 Wn.2d 404, 411, 441 P.3d 818 (2019); *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn.2d 784, 787, 16 P.3d 574 (2001). The statutes governing PIP coverage are found in Chapter 48.22 RCW, entitled "Casualty Insurance." RCW 48.22.005 sets forth definitions applicable throughout Ch. 48.22, and RCW 48.22.085-.105 set forth requirements particular to PIP coverage. Washington mandates that automobile policy insurers offer PIP coverage. *See Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 14, 419 P.3d 400 (2018); RCW 48.22.085(1); RCW 48.22.095(1). Washington's statutory requirement that automobile insurers offer PIP coverage implicates its strong public policy to fully compensate medical expenses for the victims of automobile accidents.

See Durant, 191 Wn.2d at 14-15; *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 620-21, 160 P.3d 31 (2007).

The statutorily required elements of PIP coverage are determined by reading several Ch. 48.22 RCW sections together. The coverage requirements pertinent in *McLaughlin* provide:

- 1) PIP coverage must include “medical and hospital benefits” (*see* RCW 48.22.005(12), RCW 48.22.095(a), RCW 48.22.100(1));
- 2) “Medical and hospital benefits” means payment for reasonable and necessary health care expenses incurred by *the insured* for injuries resulting from an automobile accident (*see* RCW 48.22.005(7));
- 3) “Insured” means:
 - (a) the named insured or a resident of the named insured’s household; or
 - (b) a person who sustains bodily injury caused by accident while: (i) occupying or using the insured automobile with permission; or (ii) a pedestrian accidentally struck by the insured automobile (*See* RCW 48.22.005(5)).

Washington insurance statutes mandate PIP coverage that pays for medical expenses incurred by a named insured for treatment for injuries that result from an automobile accident.

C. Washington’s Statutory Mandate To Pay PIP Expenses Incurred By A Named Insured For Injuries Resulting From An Automobile Accident Requires PIP Coverage For A Named Insured Bicyclist Injured In An Automobile Accident.

Coverage mandated by statute is part of an insurance policy. *See Kyrkos v. State Farm*, 121 Wn.2d 669, 672, 852 P.2d 1078 (1993); *Touchette v. Northwestern Mut. Ins. Co.*, 80 Wn.2d 327, 328, 494 P.2d 479 (1972). In cases interpreting UIM coverage, this Court voids “any provision in an insurance policy which is inconsistent with the statute, which is not

authorized by the statute, or which thwarts the broad purpose of the statute.” *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 251, 850 P.2d 1298 (1993). Where statutorily mandated coverage is not included in an insurance contract, the intent of the parties is irrelevant to a determination of coverage. *See Clements*, 121 Wn.2d at 256. “In arguing that the intent of the contracting parties is the sole determinative issue, Travelers ignores the fact that insurance regulatory statutes become part of insurance policies.” *Id.* at 254.

Like UIM, statutorily required PIP coverage cannot be limited by an insurance policy provision. In *Durant*, this Court prohibited an insurer’s policy language diminishing required PIP coverage:

“No insurance contract can contain an inconsistent or contradictory term to any mandated, standard provision unless it is more favorable to the insured.” *Kroeber v. GEICO Ins. Co.*, 184 Wn.2d 925, 929-30, 366 P.3d 1237 (2016) (citing RCW 48.18.130(2)); *see also Liberty Mut. Ins. Co. v. Tripp*, 144 Wn.2d 1, 12, 25 P.3d 997 (2001) (insurers cannot diminish statutorily mandated coverage through language in the insurance policy); *Britton v Safeco Ins. Co. of Am.*, 104 Wn.2d 518, 531, 707 P.2d 125 (1985) (where legislature has mandated a certain amount and kind of coverage, an insurer cannot avoid that obligation by a policy clause which has not been authorized by the legislature); *Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 672, 852 P.2d 1078 (1993) (exclusions that deny statutory mandated coverage are void).

Durant, 191 Wn.2d at 11. Where a PIP insurer substitutes policy language for required PIP coverage and the two phrases conflict, the statutory language controls. *See Boag v. Farmers Ins. Co.*, 117 Wn. App. 116, 124-25, 69 P.3d 370 (2003).

McLaughlin is a named insured in an automobile policy that provides that Travelers will pay for medical expenses for injuries sustained by an

“insured” and caused by an accident. The policy limits the coverage for the named insured to an insured 1) while occupying a motor vehicle, or 2) as a pedestrian when struck by a motor vehicle. *See* CP 39. Washington PIP statutes mandate broader coverage, requiring payment of medical expenses incurred by a named insured for injuries resulting from an automobile accident. *See* RCW 48.22.005(5), (7), (12), 48.22.095(1)(a). Accordingly, payment of PIP benefits is statutorily required for a named insured who is injured in an automobile accident whether occupying a motor vehicle, walking down the street, or riding a bicycle.

The Court of Appeals suggests that this is a simple case of applying the rules of contract interpretation to determine the plain meaning of an undefined policy term, and there is no need to consider statutory definitions or to apply principles of statutory interpretation. *See McLaughlin*, 9 Wn. App. 2d at 680, 685. But the court must consider whether the policy provisions which are the subject of its interpretation conflict with statutory requirements. *See Durant*, 191 Wn.2d at 11; *Boag*, 117 Wn. App. at 124-25.

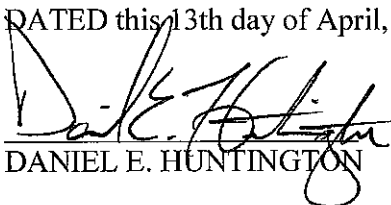
In interpreting an insurance contract and the plain meaning of contract terms, a court looks to determine the intent of the parties. *See Campbell v. Ticor Title Ins. Co.*, 166 Wn.2d 466, 472, 209 P.3d 859 (2009). However, the intent of the parties is irrelevant to the determination of insurance policy coverage where the policy does not include statutorily mandated coverage. *See Clements*, 121 Wn.2d at 256. Here, Travelers’ limitation of the circumstances in which its insured will be afforded PIP

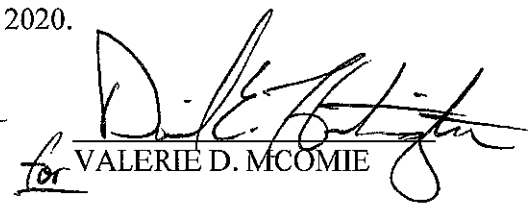
coverage conflicts with statutorily required PIP coverage for a named insured; the statutory language controls. *See id.* at 251; *Boag*, 117 Wn. App. at 124-25. Under Washington law, McLaughlin, as a named insured, is entitled to coverage for medical expenses resulting from an accident, which includes being struck by an automobile while riding a bicycle. This should end the Court's inquiry.

VI. CONCLUSION

The Court should adopt the analysis advanced in this brief and resolve this appeal accordingly.

DATED this 13th day of April, 2020.


DANIEL E. HUNTINGTON


for VALERIE D. MCOMIE

On behalf of
Washington State Association for Justice Foundation

APPENDIX



Automobile Policy Continuation Declarations

1. Named Insured

TODD MCLAUGHLIN ROBIN MCLAUGHLIN
4379 CAMPINIA PL
PLEASANTON, CA 94586-2500

Your Agency's Name and Address

SELECTQUOTE AUTO & HOME INS
C/O TRAVELERS
P.O. BOX 59059
KNOXVILLE, TN 37950-9059

Your Insurer

TRAVELERS COMMERCIAL INSURANCE COMPANY
ONE TOWER SQUARE, HARTFORD, CT 06183

Your Auto Policy Number 995399724 203 1
Your Account Number 995399724

For Policy Service 1-800-842-5075
For Claim Service 1-800-252-4633
For Roadside Assistance 1-800-252-4633

2. Premium

Your Total Premium for the Policy Period is \$7,009.

The policy period is from March 7, 2017 to March 7, 2018 12:01 A.M. STANDARD TIME at your address shown in Item 1.

3. Your Vehicles

Identification Numbers

1. 2015 TESLA MODEL S 85
2. 2015 TOYOT TACOMA DOU
3. 2014 LEXUS GX 460 PRE
4. 2004 JEEP WRANGLER S
5. 1999 TOYOT TACOMA PRE
6. 2016 FORD F-150 SUPE

370
9965
4430
5109
7238
4339

4. Coverages, Limits of Liability and Premiums

Insurance is provided only where a premium entry is shown for the coverage. The premium entry "Inc" or "Pkg" means the premium charge is included in the premium for another coverage or a package.

Vehicle(s) 1-4

	VEHICLE 1	VEHICLE 2	VEHICLE 3	VEHICLE 4
	15 TESLA MODEL S 85	15 TOYOT TACOMA DOU	14 LEXUS GX 460 PRE	04 JEEP WRANGLER S
A. Bodily Injury				
\$250,000 each person				
\$500,000 each accident	\$732	\$196	\$407	\$327
B. Property Damage				
\$100,000 each accident	\$277	\$108	\$222	\$163
C. Medical Payments				
\$5,000 each person	\$33	\$20	\$35	\$12

MEDICAL PAYMENTS COVERAGE SECTION

Coverage C – Medical Payments

Insuring Agreement

- A. We will pay the usual and customary charge for reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by an accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

We have the right to review expenses incurred to determine if they are reasonable and necessary, and not in excess of the usual and customary charge for services. We may use any or all of the following sources to decide if any medical expense is usual and customary, reasonable, necessary and caused by an accident. These sources may include:

1. Our review of medical records and test results, or review by persons or services chosen by us;
2. Published or public sources of medical expense information;
3. Computer programs for analysis of medical treatment and expenses; and
4. Exams by physicians we select.

- B. "Insured" as used in this Coverage Section means:

1. You or any "resident relative":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying":
 - a. "Your covered auto"; or
 - b. A motor vehicle that you do not own while being operated by you or a "resident relative".

Exclusions

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motor vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (2.) does not apply to a vehicle used for a:
 - a. Share-the-expense car pool;
 - b. Charitable purpose; or

c. Volunteer purpose.

3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "resident relative"; or
 - b. Furnished or available for the regular use of any "resident relative".
 However, this Exclusion (6.) does not apply to you.
7. Sustained while "occupying" a vehicle without a reasonable belief that such "insured" is entitled to do so. This Exclusion (7.) does not apply to a "resident relative" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto or sport utility vehicle;
 - b. Pickup or van, other than "your covered auto", with a Gross Vehicle Weight Rating of 10,000 lbs. or less; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
11. Sustained while "occupying" any vehicle while participating or competing in, or practicing or preparing for, any prearranged or organized:
 - a. Racing contest, meet or rally, whether against another vehicle or against time;
 - b. Demolition contest;

- c. Stunting activity; or
- d. High performance driving or racing instruction course or school.

This Exclusion (11.) applies only while the vehicle is at a location, whether temporary or permanent, established for any of the activities listed above.

- 12. Sustained while "occupying" "your covered auto" during a period it is rented or leased by you to others. However, this Exclusion (12.) does not apply to you or a "resident relative".

Limit Of Liability

- A. The limit of liability shown in the Declarations for Coverage C is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 - 1. "Insureds";
 - 2. Claims made;
 - 3. Vehicles or premiums shown in the Declarations; or
 - 4. Vehicles involved in the auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this Coverage Section and:
 - 1. Any other Coverage Section or part of this policy; or
 - 2. Any other personal auto policy issued to you by us or any of our affiliates.

Other Insurance

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", will be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

RCW 48.22.005**Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

(a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;

(b) A vehicle operated on rails or crawler-treads;

(c) A vehicle located for use as a residence;

(d) A motor home as defined in RCW 46.04.305; or

(e) A moped as defined in RCW 46.04.304.

(2) "Bodily injury" means bodily injury, sickness, or disease, including death at any time resulting from the injury, sickness, or disease.

(3) "Income continuation benefits" means payments for the insured's loss of income from work, because of bodily injury sustained by the insured in an automobile accident, less income earned during the benefit payment period. The combined weekly payment an insured may receive under personal injury protection coverage, worker's compensation, disability insurance, or other income continuation benefits may not exceed eighty-five percent of the insured's weekly income from work. The benefit payment period begins fourteen days after the date of the automobile accident and ends at the earliest of the following:

(a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;

(b) Fifty-four weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(4) "Insured automobile" means an automobile described on the declarations page of the policy.

(5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered. The maximum benefit is forty dollars per day. Reimbursement for loss of services ends the earliest of the following:

(a) The date on which the insured person is reasonably able to perform those services;

(b) Fifty-two weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eyeglasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising

out of the ownership, maintenance, or use of an insured automobile. An automobile liability policy does not include:

- (a) Vendors single interest or collateral protection coverage;
- (b) General liability insurance; or
- (c) Excess liability insurance, commonly known as an umbrella policy, where coverage applies only as excess to an underlying automobile policy.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100. Payments made under personal injury protection coverage are limited to the actual amount of loss or expense incurred.

[2003 c 115 § 1; 1993 c 242 § 1.]

NOTES:

Severability—1993 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 242 § 7.]

Effective date—1993 c 242: "Sections 1 through 5 of this act shall take effect July 1, 1994." [1993 c 242 § 8.]

RCW 48.22.085**Automobile liability insurance policy—Optional coverage for personal injury protection—Rejection by insured.**

(1) No new automobile liability insurance policy or renewal of such an existing policy may be issued unless personal injury protection coverage is offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured rejects personal injury protection coverage:

(a) That rejection is valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage; and

(b) The insurer is not required to include personal injury protection coverage in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing.

(3) The coverage under this section may be excluded as provided for under RCW **48.177.010(6)**.

[2015 c 236 § 8; 2003 c 115 § 2; 1993 c 242 § 2.]

NOTES:

Severability—Effective date—1993 c 242: See notes following RCW **48.22.005**.

RCW 48.22.095**Automobile insurance policies—Minimum personal injury protection coverage.**

(1) Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with benefit limits as follows:

- (a) Medical and hospital benefits of ten thousand dollars;
- (b) A funeral expense benefit of two thousand dollars;
- (c) Income continuation benefits of ten thousand dollars, subject to a limit of two hundred dollars per week; and
- (d) Loss of services benefits of five thousand dollars, subject to a limit of two hundred dollars per week.

(2) The coverage under this section may be excluded as provided for under RCW **48.177.010(6)**.

[2015 c 236 § 9; 2003 c 115 § 4; 1993 c 242 § 4.]

NOTES:

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

RCW 48.22.100**Automobile insurance policies—Personal injury protection coverage—Request by named insured—Benefit limits.**

If requested by a named insured, an insurer providing automobile liability insurance policies must offer personal injury protection coverage for each insured with benefit limits as follows:

- (1) Medical and hospital benefits of thirty-five thousand dollars;
- (2) A funeral expense benefit of two thousand dollars;
- (3) Income continuation benefits of thirty-five thousand dollars, subject to a limit of seven hundred dollars per week; and
- (4) Loss of services benefits of fourteen thousand six hundred dollars.

[2003 c 115 § 5; 1993 c 242 § 5.]

NOTES:

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2020, I electronically filed with the Clerk of the Court using the Washington State Appellate Courts Portal and also served via email the foregoing document to the following:

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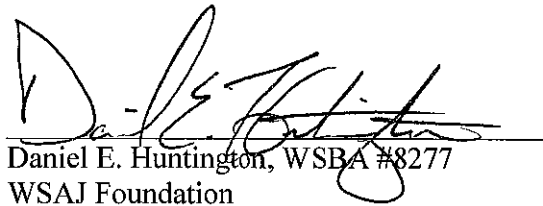
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